IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 449 of 1999.

Date of decision: 03.1.2007.

State of H.P. ... Appellant

Versus

Bidhu Kohli & Anr. … Respondents

Coram :

The Hon'ble Mr. Justice V.K. Ahuja, Judge.

Whether approved for reporting?[1] No.

For the appellant: Mr. Ashutosh Burathoki, Additional Advocate General.

For the respondents: Mr. Ramakant Sharma, Advocate, for respondent No. 1.

Mr. R.K. Gautam, Sr. Advocate with Mr. Anurag Sharma, Advocate, for respondent No.2.

V.K. Ahuja, J. (Oral):

This appeal has been filed by the appellant/State of H.P. against the judgment of the Court of learned Sub Divisional Judicial Magistrate, Kandaghat, dated 31.12.1998, vide which the respondents were acquitted of the charge framed under Sections 279/337/338/304-A I.P.C.

Brief facts of the case are that on 12.5.1992 at about 2.30 P.M., on receipt of a information regarding the accident having taken place in between a truck and gypsy, a police officer went to the spot and

[1]Whether reporters of Local Papers may be allowed to see the judgment? No.

found gypsy lying on the middle of the road towards Shimla side and six persons were lying below the gypsy. A truck bearing No. HP 25-0948 facing towards Solan was standing to its left side. A case was registered by the police and after investigation, the challan was filed before the learned trial Court who tried the respondents resulting in their acquittal.

I have heard Mr. Ashutosh Burathoki, learned Additional Advocate General, for the appellant and Mr. Ramakant Sharma, Advocate, for respondent No. 1 and Mr. R.K. Gautam, Sr. Advocate with Mr. Anurag Sharma, Advocate, for responcdent No. 2 and have gone through the record.

The submissions of the learned Additional Advocate General were that statements of two eye witnesses PW5 Kundan Verma and PW7 Prem Kumar coupled with the statement of Investigating Officer PW 11 Ramesh Pathania was sufficient to prove the guilt of respondent No. 1 and the learned trial Court had wrongly rejected the testimony of two eye witnesses by making observations and as such, those findings are liable to be reversed.

On the other hand, the learned counsel for the respondents had supported the impugned judgment for the reasons recorded therein.

Coming to the record of the case, it is clear that the Investigating Officer did not conclude that the accident took place due to the rash and negligent driving of the gypsy driver or that of the truck driver and, therefore, on the basis of the evidence recorded by him, he filed challan against both the drivers of the vehicles. It has to be seen as to whether the guilt of the respondents were established from the evidence or not.

Coming to the evidence, PW5 Kundan Verma was going on a scooter being driven by him along with PW7 Prem Kumar. He stated that he was going from the Petrol Pump and saw gypsy lying on the spot and 3-4 persons had suffered injuries. He stated that he is not aware about the speed of the vehicles. He was declared hostile and subjected to detailed cross-examination by the learned A.P.P. for the State. However, nothing could be extracted from his statement. He simply stated that when he reached the spot, many persons had gathered there and he has not seen actual striking of the vehicles. PW7 Prem Kumar, a pillion rider of the scooter, had stated that he was going with PW5 Kundan Verma on his scooter. A gypsy was going towards Shimla side which was on wrong side and it struck with the rear portion of the truck and turned it. He stated that the accident took place due to the negligence of the gypsy driver. After sometime, police reached there and they took injured to the hospital. His statement was not relied upon by the learned trial Court by making observation that the scootrist Kundan Verma who was driving the scooter at that time was a lengthy man having more height than him and, therefore, this witness could not see the accident. The observation made by the learned trial Court may not be correct, but it cannot be said that the statement of this witness can be relied on so as to hold that the accident had taken place due to the negligence of the gypsy driver. He had not state as to the manner in which the accident took place or what was the speed of the vehicle, though he stated in his cross-examination that it was 60-70K.M. per hour. He had only drawn the conclusion that the accident had taken place due to the negligence of the gypsy driver, but could not substantiate as to the manner in which the accident occurred or the cause of the accident, so as to hold that the gypsy driver

was negligent in driving the vehicle. The statements of other witnesses are not material since PW8 Sanjeev Kumar another eye witness had turned hostile and had not supported the prosecution case. He was one of the occupant of the gypsy and had stated that the gypsy driver was driving the vehicle properly. PW10 Mansa Ram had also turned hostile and had not supported the prosecution story.

Statement of PW11 Ramesh Pathania, Investigating Officer was relied but this statement in itself cannot be said sufficient to prove the manner of the accident or that the gypsy driver was rash or negligent in driving the vehicle. PW11 has only stated about the position at the spot and from the manner the two vehicles were standing at the spot and from the spot memo, he had drawn the conclusion that the gypsy was 18 feet on the wrong side and its front portion had struck with the rear portion of the truck and, therefore, he had drawn the conclusion that the accident had taken place due to the rash and negligent driving of the gypsy driver. He also made an observation that there were skid marks of 8 feet which shows that the truck driver had tried to stop the truck at the relevant time. The observation made by the Investigating Officer cannot be made the basis to hold that as to what was the cause of the accident. According to law, the mere fact that the accident had taken place or some persons had suffered injuries or died is not sufficient to hold that the driver can be held liable for rash an d negligent driving until and unless, there is direct evidence to prove that the driver was driving the vehicle in a rash or negligent manner. There is no positive evidence on record and the findings recorded by the learned trial Court cannot be said to be perverse holding that the prosecution had failed to prove their case and as such, those findings do not call for any interference and as

such, those findings are affirmed. The appeal filed by the appellant is dismissed accordingly. Bail bonds stand discharged forthwith. A copy of the judgment along with record be sent to the concerned Court.

(V.K. Ahuja),
Judge

January 3, 2007
(BSS)